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BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Telephone Number Portability )

CC Docket No. 95-116  
RM 8535

To: The Commission

**REPLY COMMENTS OF MOBILEMEDIA COMMUNICATIONS, INC.**

MobileMedia Communications, Inc., the parent company of MobileMedia Paging, Inc. and Mobile Communications Corporation of America (collectively "MobileMedia"), hereby submits these reply comments in response to Section IV.A.3 in general, and paragraphs 208-209 in particular, of the Commission's *Further Notice of Proposed Rulemaking*, CC Docket No. 95-116, FCC 96-286 (released July 2, 1996), *summarized*, 61 Fed. Reg. 38,687 (July 25, 1996) ("FNPRM").<sup>1</sup>

**SUMMARY**

The Commission has concluded in this proceeding that paging and other messaging services should be excluded from the requirement to provide either currently available measures or long-term number portability, based on the fact that such services have a negligible impact on competition between providers of wireless telephone service and between wireless and wireline carriers. Because paging and messaging service providers are not required to provide number portability, and thus will gain no benefit therefrom, MobileMedia believes that the Commission should refrain from requiring such providers to contribute to the recovery costs for number portability. Any cost recovery mechanism ultimately adopted should avoid placing large financial burdens any particular class of carriers, especially those not required to participate in number portability.

<sup>1</sup> The *First Report and Order* portion of this document, summarized at 61 Fed. Reg. 38,605 (July 25, 1996), shall be referred to herein as the "*First R&O*."

## DISCUSSION

In the *First R&O* in this proceeding, the Commission required local exchange carriers and those CMRS carriers which are expected to compete in the local exchange market — cellular, broadband PCS, and “covered” SMR providers — to offer number portability. The Commission specifically excluded, however, paging and other messaging services from the requirement to provide either currently available measures or long-term number portability. This decision was based on the fact that such services have a negligible impact on competition between providers of wireless telephone service and between wireless and wireline carriers.<sup>2</sup> In the *FNPRM*, the Commission seeks comment regarding cost recovery mechanisms for long-term number portability.

Pursuant to new Section 251(e)(2) of the Communications Act of 1934, as amended, “[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.”<sup>3</sup> The Commission has tentatively concluded that the competitively neutral standard applies only to number portability costs, such as the costs necessary to build, operate, and maintain the number portability databases, and not to cost recovery of carrier-specific costs.<sup>4</sup> MobileMedia supports this tentative conclusion and agrees with the Personal Communica-

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<sup>2</sup> *First R&O* at ¶ 156; *see id.* at C-4. The Commission stated that “[b]ecause of the technical hurdles faced by paging and other messaging service providers, the minimal impact that paging and messaging services have on local competition, and the competitive nature of paging and within the paging industry, we conclude that the costs to paging companies to upgrade their networks to accommodate either interim or long-term number portability solutions, estimated at \$30 million by one carrier, outweigh the competitive benefits derived from service provider portability.” *Id.* at ¶ 156 n.451.

<sup>3</sup> 47 U.S.C. § 251(e)(2).

<sup>4</sup> *FNPRM* at ¶¶ 208-09.

tions Industry Association (“PCIA”) that individual carriers should be required to “bear their own costs of deploying number portability in their own networks.”<sup>5</sup>

The Commission has also asked for comment on whether it has the authority to exclude certain groups from the cost recovery mechanisms for number portability.<sup>6</sup> MobileMedia agrees with PCIA that the Commission *does* have the authority to exclude certain groups of telecommunications carriers from the cost recovery mechanisms for number portability.<sup>7</sup> This authority derives from Section 251(e)(2)’s limitation that the costs of number portability are to be applied on a “competitively neutral basis.” MobileMedia agrees with the Commission and PCIA that this phrase means that the costs of number portability to be borne by each carrier should not significantly affect a carrier’s ability to compete with other carriers for customers in the marketplace.<sup>8</sup> In other words, a competitively neutral cost recovery mechanism should not give one service provider a cost advantage over another service provider when *competing for a specific subscriber*, and it should not have a disparate effect on the ability of *competing service providers* to earn normal returns on their investment.<sup>9</sup> The Commission should thus exclude those carriers from the cost recovery mechanisms for number portability which have been specifically excluded from the provision number portability because they do not compete with carriers required to provide number portability.

Specifically, MobileMedia believes that any cost recovery mechanism adopted in this proceeding should not be applied to paging and other messaging services, because to do so would be contrary to the requirement that cost recovery be competitively neutral. As previously noted, the

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<sup>5</sup> See PCIA Comments at 7.

<sup>6</sup> FNPRM at ¶ 209.

<sup>7</sup> See PCIA Comments at 4.

<sup>8</sup> *Id.*; FNPRM at ¶ 131.

<sup>9</sup> See FNPRM at ¶¶ 132, 135, 210.

Commission has already concluded that paging and messaging services have a negligible impact on competition between providers of wireless telephone service and between wireless and wireline carriers; hence, paging carriers are neither competing for the same subscribers as LECs, cellular, broadband PCS, and certain SMR providers, nor are they competing in the provision of the same service. MobileMedia thus agrees with PCIA that paging and messaging providers should not be required to contribute to the recovery of the costs for number portability when they are outside the number portability scheme — namely, they are not required to provide number portability and they will receive no benefit from number portability.<sup>10</sup>

MobileMedia supports the comments of PCIA that in determining cost recovery mechanisms to support number portability, the Commission “should take into account the nature of participation by and benefit received by particular categories of carriers.”<sup>11</sup> As noted, paging and messaging service providers are not required to participate in the provision of number portability.<sup>12</sup> Moreover, any benefit to be derived from number portability will accrue to those carriers participating in the provision of number portability — LECs and cellular, broadband PCS, and covered SMR providers — and not to paging and messaging service providers, which are specifically excluded.

Imposing an obligation on all carriers to contribute to the recovery of the costs of number portability, when certain carriers like paging and messaging service providers are excluded from the provision of number portability and will not share in the benefits thereof, is clearly beyond the Commission’s lawful authority. Such an obligation would amount to a tax, because it imposes a financial liability for the general welfare without regard to the benefits received. The Commission exceeds its authority when it effectively taxes its regulatees without regard to whether they receive

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<sup>10</sup> See PCIA Comments at 5 & n.14.

<sup>11</sup> PCIA Comments at 3.

<sup>12</sup> *First R&O* at ¶ 156.

the benefits of the tax. That is a power reserved to Congress.<sup>13</sup> In the case of number portability, Congress has directed that the cost recovery mechanism be competitively neutral, which clearly indicates that the recovery of costs bear some rational relationship to the benefits received. Congress plainly did not authorize the Commission to tax paging and messaging service providers to recover the cost of a program that will only benefit others.

In any event, MobileMedia believes that if the Commission determines that paging and messaging service providers should contribute to the recovery of costs of providing number portability, large financial burdens should not be placed on any particular class of carriers, particularly those not required to participate in number portability. Thus, MobileMedia supports PCIA's opposition to mechanisms which will create competitive disparities or inequitable funding obligations, such as basing contributions on a carrier's net or gross revenues (which discriminates against low profit margin carriers).<sup>14</sup> Instead, MobileMedia supports proposals to allocate based upon nationwide elemental access lines and recovery through a cost fund linked to a mandatory, averaged, and uniform end-user charge, such as that proposed by SBC.<sup>15</sup> Such a proposal will avoid distortions which are inherent in revenue-based methods of cost allocation.

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<sup>13</sup> *See National Cable Television Ass'n v. United States*, 415 U.S. 336, 340-41 (1974).

<sup>14</sup> *See PCIA Comments* at 7.

<sup>15</sup> *See SBC Communications, Inc. Comments* at 2, 7-16.

**CONCLUSION**

Based on the foregoing, MobileMedia believes that the Commission should refrain from requiring paging and messaging service providers to contribute to the recovery costs for number portability, particularly when they are not required to provide number portability and will gain no benefit therefrom. Moreover, any cost recovery mechanism ultimately adopted should avoid placing large financial burdens any particular class of carriers, especially those not required to participate in number portability.

**Respectfully submitted,**

A handwritten signature in black ink, appearing to read "Gene P. Belardi", with a stylized flourish at the end.

**Gene P. Belardi  
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**September 16, 1996**

**CERTIFICATE OF SERVICE**

I, Phyllis M. Martin, do hereby certify that I have, on this 16th day of September 1996, served by hand delivery, a copy of the foregoing Reply Comments Of MobileMedia Communications, Inc., in CC Docket 95-116, to the following:

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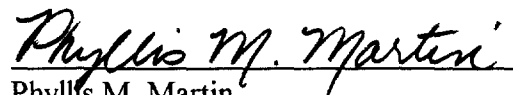
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